

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 180**

FINAL READING

Introduced by Hilgert, 7; Connealy, 16

Read first time January 4, 2001

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-301, 48-311,  
2 48-2111, and 48-2114, Reissue Revised Statutes of  
3 Nebraska, and sections 48-303 and 48-446, Revised  
4 Statutes Supplement, 2000; to change provisions relating  
5 to child employment in detasseling, child employment  
6 certificates, and worker safety programs; to define and  
7 redefine terms; to provide duties; to change penalties;  
8 to harmonize provisions; to provide a duty for the  
9 Revisor of Statutes; to repeal the original sections; and  
10 to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) A child under the age of twelve shall not  
2 be employed in detasseling.

3           (2) A child who is at least twelve years but less than  
4 sixteen years of age may be employed in detasseling if:

5           (a) The employment is outside of school hours during the  
6 month of June, July, or August;

7           (b) The employer of such child obtains the written  
8 consent of a parent of the child or a person standing in loco  
9 parentis to the child for the child to be so employed;

10          (c) The child is domiciled within seventy-five miles of  
11 the location where the labor is to be performed; and

12          (d) The child does not work more than forty-eight hours  
13 in any one week, nor more than nine hours in any one day, nor  
14 before the hour of 6 in the morning, nor after the hour of 8 in the  
15 evening if the child is under the age of fourteen, nor after the  
16 hour of 10 in the evening if the child is between the ages of  
17 fourteen and sixteen. Transportation time shall not be counted  
18 under this subdivision nor shall time spent during work breaks or  
19 waiting time spent during storm events if no work is required  
20 during those periods.

21          (3) Sections 48-302 and 48-310 do not apply to employment  
22 of a child in detasseling if the requirements of subsection (2) of  
23 this section are met.

24          (4) This section does not apply to a parent or a person  
25 standing in loco parentis who employs and directly supervises his  
26 or her own child or a child in his or her custody in a business  
27 owned and operated by such parent or person standing in loco  
28 parentis.

1           Sec. 2.   (1) An employer who employs a child under  
2 sixteen years of age in detasseling shall provide at least two  
3 supervisors who are eighteen years of age or older at each location  
4 where detasseling is being performed by a child under sixteen years  
5 of age. The supervisors shall be capable of assisting with issues  
6 of health, safety, and wages, including bonuses and incentive  
7 payments.

8           (2) An employer who employs a child under sixteen years  
9 of age in detasseling shall provide the parents of such child with  
10 an information sheet defining the terms of employment, including,  
11 but not limited to, the availability of water and sanitary  
12 facilities on the job and wage, bonus, and incentive payment  
13 information. The information sheet shall set forth the name,  
14 address, and telephone number of the Division of Safety and Labor  
15 Standards of the Department of Labor for purposes of filing  
16 complaints concerning nonpayment of wages.

17           Sec. 3.   Section 48-301, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           48-301.   For purposes of sections 48-302 to 48-313 and  
20 sections 1 and 2 of this act:

21           (1) Employment ~~7 employment~~ means ~~(1)~~ (a) service for  
22 wages or ~~(2)~~ (b) being under a contract of hire, written or oral,  
23 express or implied. Employment, other than detasseling, does not  
24 include any employment for which the employer is not liable for  
25 payment of the combined tax or payment in lieu of contributions  
26 under section 48-648, 48-649, or 48-660.01; and

27           (2) Detasseling means the removal of weeds, off-type and  
28 rogue plants, and corn tassels in hand pollinating and in any other

1 engagement in hand labor in the production of seed.

2           Sec. 4.     Section 48-303, Revised Statutes Supplement,  
3 2000, is amended to read:

4           48-303. Except as otherwise provided in this section, an  
5 ~~An~~ employment certificate shall be approved only by the  
6 superintendent of the primary high school district in which the  
7 child resides or by a person authorized by him or her in writing  
8 or, when there is no superintendent, by a person authorized by the  
9 school district officers, except that no school district officer or  
10 other person authorized by this section may approve such  
11 certificate for any child then in or about to enter his or her own  
12 employment or the employment of a firm or corporation of which he  
13 or she is a member, officer, or employee or in whose business he or  
14 she is interested. If a child who resides in an adjoining state  
15 seeks to work in Nebraska, the Department of Labor may approve the  
16 employment certificate. The officer or person approving such  
17 certificate may administer the oath provided for therein or in any  
18 investigation or examination necessary for the approval thereof.  
19 No fee shall be charged for approving any such certificate or for  
20 administering any oath or rendering any services related thereto.  
21 The school board or board of education of each school district  
22 approving the employment certificate, or the department if the  
23 department has approved the employment certificate, shall establish  
24 and maintain proper records where copies of all such certificates  
25 and all documents connected therewith shall be filed and preserved  
26 and shall provide the necessary clerical services for carrying out  
27 sections 48-302 to 48-313 and sections 1 and 2 of this act. The  
28 person who issued the employment certificate shall report to the

1 ~~Department of Labor~~ department any complaint concerning the  
2 conditions of employment of a child for whom a certificate is in  
3 force. Upon receipt of the report, the ~~Department of Labor~~  
4 department shall make such investigation as it deems advisable to  
5 protect an individual child or to promote the youth-work program.

6 Sec. 5. Section 48-311, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 48-311. Whoever employs a child under sixteen years of  
9 age and whoever, having under his or her control a child under such  
10 age, causes or permits such child to be employed in violation of  
11 sections 48-302 to 48-313 and sections 1 and 2 of this act is  
12 guilty of a Class ~~V~~ II misdemeanor. Whoever continues to employ  
13 any child in violation of any of such sections, after being  
14 notified by an attendance officer or by the Department of Labor or  
15 by its assistants or employees, is, for every day thereafter that  
16 such employment continues, guilty of a Class ~~V~~ II misdemeanor.

17 The failure of an employer of child labor to produce,  
18 upon request of a person authorized to demand the same, any  
19 employment certificate or list required by such sections shall be  
20 prima facie evidence of the illegal employment of any child whose  
21 employment certificate is not produced or whose name is not listed.  
22 Any corporation or employer retaining employment certificates in  
23 violation of such sections is guilty of a Class ~~V~~ II misdemeanor.

24 Every person authorized or required to sign any  
25 certificate or statement prescribed by such sections who knowingly  
26 certifies or makes oath to any material false statement therein or  
27 who violates any of the provisions of such sections is guilty of a  
28 Class ~~V~~ II misdemeanor.

1           Every person who refuses admittance to any person  
2 authorized to visit or inspect any premises or place of business  
3 under the provisions of such sections and to produce all  
4 certificates and lists he or she may have when demanded, after such  
5 person shall have announced his or her name and the office he or  
6 she holds and the purpose of his or her visit, or otherwise  
7 obstructs such persons in the performance of their duties  
8 prescribed by such sections is guilty of a Class V II misdemeanor.

9           Sec. 6. Section 48-446, Revised Statutes Supplement,  
10 2000, is amended to read:

11           48-446. (1) There is hereby created the Workplace Safety  
12 Consultation Program. It is the intent of the Legislature that  
13 such program help provide employees in Nebraska with safe and  
14 healthful workplaces.

15           (2) Under the Workplace Safety Consultation Program, the  
16 Department of Labor may conduct workplace inspections and  
17 consultations to determine whether employers are complying with  
18 standards issued by the federal Occupational Safety and Health  
19 Administration or the federal Mine Safety and Health Administration  
20 for safe and healthful workplaces. Workplace inspections and  
21 safety consultations shall be performed by employees of the  
22 Department of Labor who are knowledgeable and experienced in the  
23 occupational safety and health field and who are trained in the  
24 federal standards and in the recognition of safety and health  
25 hazards. The Department of Labor may employ qualified persons as  
26 may be necessary to carry out this section.

27           (3) All employers shall be subject to occupational safety  
28 and health inspections covering their Nebraska operations.

1 Employers shall be selected by the Commissioner of Labor for  
2 inspection on the basis of factors intended to identify the  
3 likelihood of workplace injuries and to achieve the most efficient  
4 utilization of safety personnel of the Department of Labor. Such  
5 factors shall include:

6 (a) The amount of premium paid by the employer for  
7 workers' compensation insurance;

8 (b) The experience modification produced by the  
9 experience rating system referenced in section 44-7524;

10 (c) Whether the employer is covered by workers'  
11 compensation insurance under section 48-146.01;

12 (d) The relative hazard of the employer's type of  
13 business as evidenced by insurance rates or loss costs filed with  
14 the Director of Insurance for the insurance rating classification  
15 or classifications applicable to the employer;

16 (e) The nature, type, or frequency of accidents for the  
17 employer as may be reported to the Department of Insurance, the  
18 Nebraska Workers' Compensation Court, or the Department of Labor;

19 (f) Workplace hazards as may be reported to the  
20 Department of Insurance, the Nebraska Workers' Compensation Court,  
21 or the Department of Labor;

22 (g) Previous safety and health history;

23 (h) Possible employee exposure to toxic substances;

24 (i) Requests by employers for the Department of Labor to  
25 inspect their workplaces or otherwise provide consulting services  
26 on a basis by which the employer will reimburse the Department of  
27 Labor; and

28 (j) All other relevant factors.

1           (4) Hazards identified by an inspection shall be  
2 eliminated within a reasonable time as specified by the  
3 Commissioner of Labor.

4           (5) An employer who refuses to eliminate workplace  
5 hazards in compliance with an inspection shall be referred to the  
6 federal Occupational Safety and Health Administration or the  
7 federal Mine Safety and Health Administration for enforcement.

8           (6) At the discretion of the Commissioner of Labor,  
9 inspection of an employer may be repeated to ensure compliance by  
10 the employer, with the expenses incurred by the Department of Labor  
11 to be paid by the employer.

12           (7) The Commissioner of Labor shall adopt and promulgate  
13 rules and regulations establishing a schedule of fees for  
14 consultations and inspections. Such fees shall be established with  
15 due regard for the costs of administering the Workplace Safety  
16 Consultation Program. The cost of consultations and inspections  
17 shall be borne by each employer for which these services are  
18 rendered.

19           (8) There is hereby created the Workplace Safety  
20 Consultation Program Cash Fund. All fees collected pursuant to the  
21 Workplace Safety Consultation Program shall be remitted to the  
22 State Treasurer for credit to the fund and shall be used for the  
23 sole purpose of administering the program. Any money in the fund  
24 available for investment shall be invested by the state investment  
25 officer pursuant to the Nebraska Capital Expansion Act and the  
26 Nebraska State Funds Investment Act.

27           (9) Each employer provided a consultation or inspection  
28 by the Department of Labor shall retain up-to-date records for each

1 place of employment as recommended by the inspection or  
2 consultation. The employer shall make such records available to  
3 the Department of Labor upon request to ensure continued progress  
4 of the employer's efforts to comply with the federal Occupational  
5 Safety and Health Administration or the federal Mine Safety and  
6 Health Administration standards.

7 (10) Any person who knowingly operates or causes to be  
8 operated a business in violation of recommendations to correct  
9 serious or imminent hazards as identified by the Workplace Safety  
10 Consultation Program shall be referred to the federal Occupational  
11 Safety and Health Administration or the federal Mine Safety and  
12 Health Administration.

13 (11) The Attorney General, acting on behalf of the  
14 Commissioner of Labor, or the county attorney in a county in which  
15 a business is located or operated may apply to the district court  
16 for an order against any employer in violation of this section.

17 (12) The Workplace Safety Consultation Program shall not  
18 be construed to alter the duty of care or the liability of an owner  
19 or a business for injuries or death of any person or damage to any  
20 property. The state and its officers and employees shall not be  
21 construed to assume liability arising out of an accident involving  
22 a business by reason of administration of the Workplace Safety  
23 Consultation Program.

24 (13) Inspectors employed by the Department of Labor may  
25 inspect any place of employment with or without notice during  
26 normal hours of operation. Such inspectors may suspend the  
27 operation of equipment determined to constitute an imminent danger  
28 situation. Operation of such equipment shall not resume until the

1 hazardous or unsafe condition is corrected to the satisfaction of  
2 the inspector.

3 (14) No person with a reasonable cause to believe the  
4 truth of the information shall be subject to civil liability for  
5 libel, slander, or any other relevant tort cause of action by  
6 virtue of providing information without malice on workplace hazards  
7 or the nature, type, or frequency of accidents to the Department of  
8 Insurance, the Nebraska Workers' Compensation Court, or the  
9 Department of Labor.

10 (15) Safety and health inspectors employed by the  
11 Department of Labor shall have the right and power to enter any  
12 premise, building, or structure, public or private, for the purpose  
13 of inspecting any work area or equipment. A refusal by the  
14 employer of entry by a safety and health inspector employed by the  
15 Department of Labor shall be a violation of this subsection. If  
16 the Commissioner of Labor finds, after notice and hearing, that an  
17 employer has violated this subsection, he or she may order payment  
18 of a civil penalty of not more than one thousand dollars for each  
19 violation. Each day of continued violation shall constitute a  
20 separate violation.

21 (16) The Commissioner of Labor shall adopt and promulgate  
22 rules and regulations to carry out this section.

23 Sec. 7. Section 48-2111, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 48-2111. The commissioner shall serve notice of  
26 revocation on the contractor by mailing such notice by certified  
27 mail or any other manner of delivery by which the United States  
28 Postal Service can verify delivery to the address of the contractor

1 or the contractor's registered agent listed in the application.  
2 Upon a showing of compliance with the application requirements set  
3 out in section 48-2105, the commissioner may temporarily reinstate  
4 the registration pending a hearing on the revocation. A  
5 registration revoked under this section shall not be permanently  
6 reinstated. To receive a new registration number, the contractor  
7 shall reapply to the commissioner.

8 Sec. 8. Section 48-2114, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 48-2114. (1) The commissioner shall issue a citation to  
11 a contractor when an investigation reveals that the contractor has  
12 violated:

13 (a) The requirement that the contractor be registered; or  
14 (b) The requirement that the contractor's registration  
15 information be substantially complete and accurate.

16 (2) If a citation is issued, the commissioner shall  
17 notify the contractor ~~by certified mail~~ of the proposed  
18 administrative penalty, if any, by certified mail or any other  
19 manner of delivery by which the United States Postal Service can  
20 verify delivery. The administrative penalty shall be not more than  
21 five hundred dollars in the case of a first violation and not more  
22 than five thousand dollars in the case of a second or subsequent  
23 violation.

24 (3) The contractor shall have fifteen working days from  
25 the date of the citation or penalty to contest such citation or  
26 penalty. Notice of contest shall be sent to the commissioner who  
27 shall provide a hearing pursuant to the Administrative Procedure  
28 Act.

1           Sec. 9. The Revisor of Statutes shall assign sections 1  
2 and 2 of this act within sections 48-301 to 48-313, and any  
3 references to sections 48-302 to 48-313 shall be construed to  
4 include sections 1 and 2 of this act.

5           Sec. 10. Original sections 48-301, 48-311, 48-2111, and  
6 48-2114, Reissue Revised Statutes of Nebraska, and sections 48-303  
7 and 48-446, Revised Statutes Supplement, 2000, are repealed.

8           Sec. 11. Since an emergency exists, this act takes  
9 effect when passed and approved according to law.